SAN LUIS OBISPO COLLEGE OF LAW

MCL Hybrid JD Program

Real Property II

Final Examination

Spring 2025

Prof. C. Lewi

Instructions:

There are three (3) questions in this examination.
You will be given three (3) hours to complete the examination.
Your answer should demonstrate your ability to analyze the facts in the question, to tell the difference between material facts and immaterial facts, and to discern the points of law and facts upon which the case turns. Your answer should show that you know and understand the pertinent principles and theories of law, their qualifications and limitations, and their relationships to each other. Your answer should evidence your ability to apply the law to the given facts and to reason in a logical, lawyer-like manner from the premises you adopt to a sound conclusion. Do not merely show that you remember legal principles; instead, try to demonstrate your proficiency in using and applying them. If your answer contains only a statement of your conclusions, you will receive little credit. State fully the reasons that support your conclusions and discuss all points thoroughly. Your answer should be complete, but you should not volunteer information or discuss legal doctrines that are not pertinent to the solution of the problem.

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Question #1

In 1950, Abe was the owner of Lot #1. Bill was the owner of Lot #2 next door. Bill wanted to build a warehouse on Lot #2 exceeding the maximum allowable square footage then permitted by the City Code and needed extra parking to get a permit.

On a "parking affidavit" form provided by City's Department of Building and Safety (DBS), Abe agreed to provide eight parking spaces on Lot #1 "to be available at all times" for Lot #2. The affidavit form did *not* contain an express statement the agreement was intended to run with the land or bind the assignees of the original owners.

The notarized affidavit documenting the agreement between Abe and Bill was filed with the City's Department of Building and Safety (DBS), which then issued Bill a building permit for Lot #2, and, ultimately, a certificate of occupancy for the completed warehouse.

The parking affidavit was never recorded; it was not required to be recorded under City's code in effect in 1950. (In 1958, City's Code was changed requiring parking affidavits that allow one property owner to use the property of another for parking must be recorded and provide that the affidavit "shall be a covenant running with the land.")

The parking spaces were constructed on Lot # 1 and were and are in existence at all relevant times. There no evidence the eight parking spaces were ever identified by either Abe or Bill or used by Bill or Bill's successors.

When, Charles, the successor in interest to Abe purchased Lot #1, he did his due diligence, including obtaining a title report from a title insurer, and neither the title policy nor the deed from Abe to Charles said anything about the parking affidavit. Charles did not have actual notice of the parking space affidavit.

For the next 19 years, Charles allocated the parking spaces to his own tenants and not Lot #2.

Then, Diane bought Lot #2 from Bill. Diane did not know about the parking affidavit when she bought Lot #2.

Diane wanted to expand the buildings on Lot #2. The plan checker at DBS told Diane that the parking affidavit from 1950 was on file and explained to Diane that the spaces indicated on the parking affidavit on file with DBS could be "grandfathered in" to meet the parking requirements for any expansion on Lot #2, so long as she notified the other owner (Charles) of the planned construction and Diane's need for the eight spaces described in the affidavit.

Diane then sent Charles a certified letter stating same. Charles received Diane's letter and signed the receipt which was returned to Diane but Charles did not actually respond to Diane.

Diane then provided the plan checker with a copy of the return receipt for the certified letter as proof Charles had been notified. Based on the receipt, the plan checker approved Diane's plans for the warehouse expansion on Lot #2 and DBS issued a building permit for the expansion.

Then over the next 14 months, Diane spent $600,000 towards the building expansion.

Diane then wrote Charles again asking him again to identify the location of the 8 parking spaces. Charles again did not do so.

Diane sued Charles to quiet title with respect to the 8 parking spaces, asserting an irrevocable license required Charles to provide the 8 parking spaces to Diane.

Discuss the following:

1. The strengths and weaknesses of Diane's irrevocable license argument? If there is an irrevocable license, what does that mean for Lot #1 and Lot #2? And, if there is an irrevocable license, is Charles bound by it?

2. Is there a covenant in favor of Lot #2 against Lot #1? If so, is Charles bound by it?

3. Is there an equitable servitude in favor of Lot #2 against Lot #1? If so, is Charles is bound by it?

IGNORE and DO NOT DISCUSS any arguments that Diane may have against City.

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QUESTION #2

O is the owner of Greenacre, a single-family house on a city street. O dies, leaving the house to O's three adult children, A, B, and C, as joint tenants with right of survivorship.

Both A and B have spouses, and each A and B have two minor children. C is unmarried and has one minor child.

A, B, and C agree that A will live in the house. They do not discuss how long this arrangement might last. The rental value of Greenacre is $9,000 per year, but A does not pay rent to B or to C.

During the first year of A's occupancy, A pays the property taxes on Greenacre, which are $12,000 per year. B and C each reimburse A for one-third of this amount, which means that A, B and C each pay $4,000 in property taxes. The three repeat this process during the second year of A's occupancy.

At the end of the second year, C dies, leaving all of C's real property to C's child, D.

In the third year, A again pays $12,000 in property taxes. A then asks B to pay a share of the taxes. This time, B refuses to do so.

B then notifies A that B wants to move into Greenacre with B's spouse and their two children. In response, A correctly points out that the house is not big enough for two families, but B is indifferent to this fact. After some argument, B files a partition action, naming A and D as defendants. Assume that there is no issue regarding ouster.

A answers the complaint, and alleges that B is demanding partition merely because B is angry at A. Therefore, A argues, B is acting in bad faith, which should defeat B's attempt to obtain partition. In addition, A asserts a counterclaim against B for B's share of the $12,000 in taxes paid by A during A's third year of occupancy.

Questions

1. Upon C's death, what interests do A, B, and D, respectively, hold in Greenacre? Explain.

2. What is the most likely disposition of B's partition claim? Explain.

3. Is A entitled to recover any of the property tax payments from B, and if so, in what amount? Explain.

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Question #3

Landlord (L) owns Whiteacre, a tract of land that contains a building plus a parking lot. L leases Whiteacre to a tenant (T) for use as a grocery store. The lease is for a 10-year term, at a rate of $3,000 per month. The lease describes the property as, “That tract of land known as Whiteacre, consisting of one commercial building and one hundred (100) parking spaces.”

L records this lease in the local recorder’s office, where all records related to interests in real property are kept, as required by law.

The parking lot on Whiteacre is bounded on one side by a state highway.

Half-way through the term of T’s lease, State decides to widen the highway. To do so, State exercises its lawful power of eminent domain to condemn a strip of land 30 feet wide along the edge of the parking lot. This reduces the number of available parking spaces on Whiteacre from 100 to 65.

The applicable law requires the State to compensate for any taking by placing the condemnation award in escrow. All parties with a legal interest in the property must then agree on how to allocate this award among themselves. If the parties cannot agree, then a judge is appointed to decide the matter.

Following this procedure, the State deposits with an escrow company $50,000 for taking the land from the parking lot. Assume that this amount is legally sufficient compensation for the taking.

T believes that the reduction in parking spaces will hinder T’s business. The lease is silent as to the effect of condemnation on the parties’ rights and obligations.

Questions:

1. What relief, if any, is T entitled to obtain for the permanent loss of parking spaces?
2. If T is entitled to relief, for how much $$$ and from whom?

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ANSWER KEY: 1

Question is taken directly from Gamerberg v. 3000 E. 11th St. LLC (2020) 44 Cal.App.5th 424.

C wins; D loses says Court of Appeal.

The key issue is NOTICE – was C on notice of the parking affidavit when C purchased Lot #1? NO says Gamerberg, and therefore C was protected by the Recording Act as a bona fide purchaser for value without notice because (1) the parking affidavit was not recorded; the fact that it was on file with the DBS did not impart constructive notice under the grantor/grantee index laws which reference recorded documents, not other documents on file with other public entities; (2) C was not on actual notice of the affidavit or the agreement the evidence showed; and (3) there was no inquiry notice to C because the parking spaces were on Lot #1 – the property C was buying – and there was no evidence that anyone from Lot #2 was using those spaces.

Even if we conclude that the 1950 affidavit – relied upon by D to the tune of $600,000 -- makes the affidavit an irrevocable license, i.e, an unrecorded easement, C was not on notice and thus not bound. And, there are plenty of reasons to argue that the affidavit was not an irrevocable license based on D's actions; D relied upon it without obtaining C's consent and even though DBS told Diane she was grandfathered in, DBS is not a Court capable of actually making that conclusion that would bind C, a stranger to the affidavit other than being a successor without notice. The Gamerberg court analyzed the irrevocable license issue by using the original 1950 reliance by Bill on Abe's license in building the original warehouse, and then assumed for the sake of analysis that there was an irrevocable license that could bind both Abe's and Bill's successors. But the Court concludes that C's lack of notice kills the notion that C is bound by the non-recorded easement created by the irrevocable license -- "irrevocable licenses do not survive transfer of the property to a purchaser without notice."

We can also do a pure covenant and "running with the land" analysis here in with respect to the 1950 covenant b/t A and B and conclude that because the 1950 agreement for parking did not arise from a conveyance or consideration outside of the covenant, there is no requisite "horizonal privity" to bind any successors. AND, we have the huge lack of notice to C problem – the burdened Lot #1 did not have notice of the burden at the time Lot #1 was conveyed to C and thus there was no vertical privity either and the covenant did not run with the land with respect to C.

Even without privity, using an equitable servitude analysis, the better argument is that there is no equitable servitude either; the 1950 affidavit does not state it is intended to run with the land or bind successors and it is filed in a place – DBS – that is not the type of location where a

reasonable successor like C should be expected to be on notice of the burden on Lot #1. And, again, C is not on actual or inquiry notice of the parking burden on Lot #2.

From the actual Gamerberg opinion:

"The legal question raised in this appeal is whether the 1950 parking affidavit can be construed to create an irrevocable license in favor of Gamerberg that is binding on Soroudi, a subsequent purchaser without notice. Gamerberg dismissed his causes of action seeking declarations of an equitable servitude or equitable easement, each of which typically requires, among other formalities, actual or constructive notice to bind a subsequent purchaser.[14] *(See, e.g., Taormina Theosophical Community, Inc. v. Silver (1983)* ***[*429]*** *140 Cal.App.3d 964, 972 [190 Cal. Rptr. 38] ["'[e]ven though a covenant does not run with the land, it may be enforceable in equity against a transferee of the covenantor who takes with knowledge of its terms under circumstances which would make it inequitable to permit him to avoid the restriction'" (quoting Marra v. Aetna Construction Co. (1940) 15 Cal.2d 375, 378 [101 P.2d 490]); see also Mesmer v. Uharriet (1916) 174 Cal. 110, 116 [162 P. 104]* ***[**657]*** *["A purchaser of land for value takes subject only to interests in the land of which he has actual notice or which appear of record. The rule applies as well to easements as to claims of a greater interest."].)*

2. The Characteristics of an Irrevocable License

"When a landowner allows someone else to use her land, the owner is granting a ***[***7]*** *license. [Citation.] A license may be created by express permission or by acquiescence (that is, by 'tacitly permit[ing] another to repeatedly do acts upon the land' 'with full knowledge of the facts' and without objecting)." (Shoen v. Zacarias (2019) 33 Cal.App.5th 1112, 1119 [245 Cal.Rptr.3d 683]* (Shoen)*.) Unlike covenants that run with the land, such as easements, a license is a personal right and confers no interest in land: "[I]t merely makes lawful an act that otherwise would constitute a trespass." (Richardson, supra, 233 Cal.App.4th at pp. 758–759; see Eastman v. Piper (1924) 68 Cal.App. 554, 560 [229 P. 1002] ["'a valid license to enter on land … rests on the distinction that a license is only an authority to do an act or series of acts on the land of another, and passes no estate or interest therein'"]; see Smith, Neighboring Property Owners (Dec. 2019 supp.) § 7:2 ["A license is best understood as a residuary category, which apples whenever an interest does not meet the definitional parameters of a lease or easement. A license, commonly viewed as an interest of much less significance than other property rights, is often stated to be not an interest in land at all, but only the mere permission of the landowner."].)*

In keeping with a license's permissive nature, "'[a] licensor generally can revoke a license at any time without excuse or without consideration to ***[***8]*** *the licensee.'" (Richardson, supra, 233 Cal.App.4th at p. 751; accord, Golden West Baseball Co. v. City of Anaheim (1994) 25 Cal.App.4th 11, 36 [31 Cal. Rptr. 2d 378] ["a license is normally revocable at will"].) Moreover, "a license, being a mere personal privilege, is never extended to the heirs or assigns of the licensee. Indeed, any attempt by the licensee to assign the license ordinarily destroys and terminates it." (Eastman v. Piper, supra, 68 Cal.App. at p. 562; accord, Beckett v. City of Paris Dry Goods Co. (1939) 14 Cal.2d 633, 637 [96 P.2d 122]; Richardson, at p. 751; see* 6 Miller & *Starr, Cal. Real Estate (4th ed. 2019) § 15.2.)*

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[14] The parking affidavit also failed to comply with the formal requirements then in effect to establish a covenant running with the land. (See *Civ. Code, former § 1468*.) Former *section 1468* provided: "A covenant made by the owner of land with the owner of other land to do or refrain from doing some act on his own land, which doing or refraining is expressed to be for the benefit of the land of the covenantee, and which is made by the covenantor expressly for his assigns or to the assigns of the covenantee, runs with both of such parcels of land." The parking affidavit, completed on a form provided by the LADBS, did not contain an express statement the agreement was intended to bind the assignees of the original owners.

*[*430]*

*Nonetheless, "[a]n otherwise revocable license becomes irrevocable when the licensee, acting in reasonable reliance either on the licensor's representations or on the terms of the license, makes substantial expenditures of money or labor in the execution of the license, and the license will continue 'for so long a time as the nature of it calls for.'" (Richardson, supra, 233 Cal.App.4th at pp. 757–758, quoting Stoner v. Zucker (1906) 148 Cal. 516, 520 [83 P. 808] (Stoner); see Cooke v. Ramponi (1952) 38 Cal.2d 282, 286 [239 P.2d 638] (Cooke); Shoen, supra, 33 Cal.App.5th at p. 1119; Hammond v. Mustard (1967) 257 Cal.App.2d 384, 389 [64 Cal. Rptr. 829].) This principle is grounded upon "the doctrine of equitable estoppel; the license, similar in its essentials of an easement, is declared to be irrevocable to prevent the licensor from perpetrating a fraud upon the licensee." (Cooke, at p. 286; see Richardson, at p. 751 [in such cases, "the licensor is said to be estopped from revoking the license, and the license becomes the equivalent of an easement, commensurate in its extent and duration with the right to be **[**658]** enjoyed"].) "[C]ourts **[***9]** may exercise their power to declare a license irrevocable only if the expenditures in reliance on the license are 'substantial,' 'considerable' or 'great,'" a requirement that ensures "courts use their power to create irrevocable licenses sparingly."[25] (Shoen, at pp. 1119–1120.) "'A license remains irrevocable for a period sufficient to enable the licensee to capitalize on his or her investment. He can continue to use it only as long as justice and equity require its use.'" (Richardson, at p. 758.)*

3. An Irrevocable License Is Not Binding on a Subsequent Purchaser Who Takes Without Notice

a. Noronha does not accurately characterize the assignability of an irrevocable license

*Assuming the 1950 parking affidavit created an irrevocable license in favor of Gamerberg's predecessor and against Soroudi's based on the expenditures in building the original warehouse, the determinative issue here is whether that license bound Soroudi, a subsequent purchaser without notice. The trial court based its ruling Soroudi was bound by the license on Noronha, supra, **[*431]** 199 Cal.App.3d 485, in which a purchaser of a lot in a subdivision received permission from the (apparent)[36] owner of the neighboring lot to construct a fence that encroached on the neighboring lot. Though the completed fence **[***10]** was open and obvious to the couple who later bought the neighboring lot, they claimed they had not realized the fence encroached on their property. The Court of Appeal found the lot owner who built the fence was entitled to an irrevocable license based on his expenditures on the fence, which "acts, for all purposes, as an easement, estopping the grantor and his successor from revoking it." (Noronha, at p. 490.) The court rejected the claim by the new owners of the neighboring lot that they had not understood the fence was on their property, because the prior owner testified he had told them of this fact at the time of purchase. (Id. at p. 491.) Notwithstanding this factual basis for a finding of actual notice, the court stated, "Nor is plaintiffs' knowledge required for the license to become irrevocable," reasoning that once the expenditures had been made, "'the license will*

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[25] "Courts have faithfully limited the exercise of their power to declare a license to be irrevocable to those situations in which the licensee has expended substantial amounts of money or labor in reliance on a license. Nearly every case where a license has been declared irrevocable has involved the licensee's permanent alteration of the land and the ensuing upkeep, whether by building, altering or upgrading a roadway [citations], constructing a ditch, canal or levee to transport water [citations], erecting a wall [citation], or raising living quarters [citation]. The high water mark in this regard is *Richardson, supra, 233 Cal.App.4th 744*, which upheld an irrevocable license based upon the licensee's extensive acts of landscaping that entailed the installation of irrigation and lighting systems; the purchase, planting and replanting of several large and expensive trees for more than two decades; and the daily watering and lighting of that landscaping." (*Shoen, supra, 33 Cal.App.5th at p. 1120*.)

[36] *Noronha* is more frequently cited for its holding that a grantor who subsequently takes title in property is bound under the doctrine of after-acquired title for promises made to a grantee who believed the grantor already held title. (*Noronha, supra, 199 Cal.App.3d at pp. 489–490*.)

continue for so long a time as the nature of it calls for.'"[47] (*Noronha, at p. 491*, *quoting* *Cooke, supra, 38 Cal.2d at p. 286*.) ***[**659]***

The analysis in Noronha is flawed, however; the court failed to recognize that not one of the cases finding a license irrevocable, including Cooke, Stoner and Richardson, addressed the rule in the context of a subsequent purchaser without notice.[58] *Soroudi argues* ***[***11]*** *the correct rule is articulated in Churchill v. Russell (1905) 148 Cal. 1 [82 P. 440] (Churchill), in which the Supreme Court considered a parol agreement (or license) permitting a neighboring landowner and his wife to draw water from a well on the grantor's property. The neighbors not only drew the allocated water from the well but also made valuable improvements on the land. When the grantor died, the subsequent purchaser of the property sought an injunction to stop the neighbors from diverting water. The court agreed the license would have been irrevocable against the original grantor, but held it was not against the subsequent purchaser who had taken the property without notice of the agreement: "Under these circumstances it was necessary for the defendants,* ***[*432]*** *in asserting their equitable interest, to allege and prove, and for the court to find, the existence of such notice in order to support their equitable claim. This proposition is so familiar that no citation of authorities is necessary to support it." (Id. at p. 6; see also Blankenship v. Whaley (1899) 124 Cal. 300, 304–305 [57 P. 79] [license to use and expand ditch for irrigation may have been irrevocable against original grantor but was not against subsequent purchasers if they took without notice, who were "protected by the recording acts"* ***[***12]*** *against "secret defects in a title"; case remanded for further findings as to notice].)*

CA(2)[] **(2)** *That the Supreme Court in Churchill accurately stated the common law rule that* ***HN3***[] *irrevocable licenses do not survive transfer of the property to a purchaser without notice is confirmed by the statements of commentators and holdings of courts in other jurisdictions. For instance, "[a] subsequent purchaser of the servient property takes title subject to an irrevocable license if such purchaser could be charged with notice of the usage at the time of purchase. Hence, a subsequent purchaser with notice cannot revoke the license, but it has been held that a bona fide purchaser without notice receives the land free of the irrevocable license." (Bruce & Ely, The Law of Easements and Licenses in Land (2019) § 11:9; accord, 8 Thompson on Real Property (2019) § 64.05(b) ["Even though the license is held to be irrevocable it may still be lost if the property is sold to a bona fide purchaser. Thus in the case of a buried water line it was held that the sale of the burdened property to a party who had no notice of its existence resulted in termination of the interest."]; Industrial Disposal v. City of East Chicago (Ind.Ct.App. 1980) 407 N.E.2d 1203, 1206 ["our courts have held that where an owner of real estate gives a license which becomes* ***[***13]*** *'irrevocable' and then sells the burdened estate to a third party, who purchases in good faith for value and without notice of the license, or of such facts as would put a man of ordinary prudence on inquiry, the third party* ***[**660]*** *takes the land free of any rights of the licensee"].) Conversely, in Blackburn v. Lefebvre (Ala.Ct.Civ.App. 2007) 976 So.2d 482 the court held that an irrevocable license to use a boat pier was enforceable against a subsequent purchaser because the underlying agreement had been recorded and thus provided notice to the purchaser. (Id. at p. 495; see also Tatum v. Dance (Fla.Dist.Ct.App. 1992) 605 So.2d 110, 112 ["a subsequent vendee having notice of the licensee's use at the time of purchase*

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[47] This language misstates the relevance of notice to irrevocable licenses. Notice to a subsequent purchaser does not affect a finding of irrevocability against the original grantor; rather, it governs the issue of assignability to subsequent purchasers, as set forth below.

[58] ***CA(1)***[] **(1)** Notwithstanding Gamerberg's assertion that the holding in *Noronha* is "binding precedent," we are not obligated to follow a decision by a Court of Appeal with which we disagree. (*Martinez v. Public Employees' Retirement System (2019) 33 Cal.App.5th 1156, 1171 [245 Cal. Rptr. 3d 693]*; see *Gonzalez v. Lew (2018) 20 Cal.App.5th 155, 166, fn. 7 [228 Cal. Rptr. 3d 775]* ***HN2***[] ["[t]here is no horizontal stare decisis in the California Court[s] of Appeal"]; *Jessen v. Mentor Corp. (2008) 158 Cal.App.4th 1480, 1489, fn. 10 [71 Cal.Rptr.3d 714]* [same].)

takes the land burdened with the license"]; [Kovach v. General Telephone Co. of Pennsylvania (1985) 340 Pa. Super. 144 [489 A.2d 883, 885]] ["[o]nce irrevocability is established, 'successors-in-title take subject to an irrevocable license if they had notice of the license before purchase'"].)

[*433]

b. To the extent an irrevocable license functions as an easement, it must be recorded to bind subsequent purchasers without actual notice

*Struggling to parse the various threads of common law servitudes in the context of modern commercial settings, Division Three of the Fourth District once observed, "Ultimately, the label given to [the plaintiff's] 'interest' is of little importance. Arrangements between **[***14]** landowners and those who conduct commercial operations upon their land are so varied that it is increasingly difficult and correspondingly irrelevant to attempt to pigeonhole these relationships as 'leases,' 'easements,' 'licenses,' 'profits,' or some other obscure interest in land devised by the common law in far simpler times. Little practical purpose is served by attempting to build on this system of classification." ([Golden West Baseball Co. v. City of Anaheim, supra, 25 Cal.App.4th at p. 36]; see French, Toward A Modern Law of Servitudes: Reweaving the Ancient Strands (1982) [55 So.Cal. L.Rev. 1261] ["[t]he law of easements, real covenants, and equitable servitudes is the most complex and archaic body of American property law remaining in the twentieth century"]; French, supra, [55 So.Cal. L.Rev. at pp. 1262-1263] ["[t]he advent of comprehensive governmental land use regulation in the twentieth century actually increased the incidence of private land use arrangements for two reasons: public regulation itself often uses private servitudes as tools of regulation; and the inherent shortcomings of public regulation encourage private arrangements"].)*

*Attempting to simplify this doctrinal thicket, the Restatement Third of Property, Servitudes, promulgated in 2000, "swe[pt] away negative **[***15]** easements, equitable servitudes, and executed parol licenses because the doctrinal differences that formerly distinguished these servitude categories have been eliminated." (French, Highlights of the New Restatement (Third) of Property: Servitudes (2000) [35 Real Prop. Prob. & Tr. J. 225, 228]; see [Rest.3d Property, Servitudes, §§ 1.2(4)] ["[a]s used in this Restatement, the term 'easement' includes an irrevocable license to enter and use land in the possession of another"], [7.14, com. a], p. 440 ["[i]nstead of drawing a distinction between servitudes based on the way they were created, the rules stated in this section distinguish among them on the basis of the function they serve"].) The Restatement takes the position "that all unrecorded servitude benefits, regardless of the manner of their creation, are subject to extinguishment under the recording act. The rationale is that societal welfare is generally enhanced by increasing the ability to determine land titles by resort to the public land records because it reduces the costs and increases the security of transactions in land. The benefits produced by subjecting all servitudes, whether written or unwritten, to extinguishment under the recording act will outweigh the social costs **[**661]** involved in the loss of useful servitudes **[***16]** and the measures knowledgeable servitude holders will take to protect against extinguishment." (Ibid.; see [Citizens for Covenant Compliance v. Anderson (1995) 12 Cal.4th 345, **[*434]** 354–355 [47 Cal. Rptr. 2d 898, 906 P.2d 1314]] (Citizens for Covenant Compliance) [recognizing efforts to merge common law servitude doctrines: "Whether the amendments to [[Civil Code] section 1468] have accomplished this fusion in California is beyond the scope of the narrow issue before us"].)*

***[CA(3)]**[⇑] **(3)** Like the Supreme Court in Citizens for Covenant Compliance, we need not determine whether the Restatement Third of Property's push to simplify the analysis of these doctrines controls here, because California courts have long recognized that **[HN4]**[⇑] "[a]n irrevocable license … is for all intents and purposes the equivalent of an easement." ([Barnes v. Hussa (2006) 136 Cal.App.4th 1358, 1370 [39 Cal.Rptr.3d 659]]; accord, [Shoen, supra, 33*

Cal.App.5th at p. 1120 ["such licenses are functionally indistinguishable from easements"]; cf. Eastman v. Piper, supra, 68 Cal.App. at p. 562 ["as the qualities of inheritability and assignability are inconsistent with a license, we must conclude that something more than a license was intended to be granted; that it was intended to create an inheritable interest in a servient estate—in short, an easement"].) As one commentator has explained, "[t]he term 'irrevocable license' is a contradiction in terms, given the traditional definition of a license ***[***17]*** *in land. Functionally, an irrevocable license does not differ at all from an easement. The only distinction is that the irrevocable license, if oral, might be invalidated from taking effect as an easement by the Statute of Frauds. … Analysis of the problem would be much improved if courts would drop the misnomer 'irrevocable license,' and instead assume that the parties intended to create an easement having a duration longer than at the grantor's will." (Smith, Neighboring Property Owners, supra, § 7.2; see also 4 Powell on Real Property (2019) Easements and Licenses, § 34.24 [declaring that an "irrevocable relationship should no longer be called a license, but rather an easement"]; Conard, An Analysis of Licenses in Land (1942) 42 Colum. L.Rev. 809, 820 ["[w]hen the parties have so acted that an unwritten license becomes irrevocable, an easement has arisen" (italics omitted)].)*

Easements, of course, are likewise unenforceable against a subsequent purchaser without notice (except in limited circumstances not applicable here).[69] (See Mesmer v. Uharriet, supra, 174 Cal. at p. 116; Pollard v. Rebman (1912) 162 Cal. 633, 634 [124 P. 235].) Accordingly, when an easement or other use is not visible and does not provide actual notice to the purchaser, it must be recorded to be enforceable. (See Civ. Code, §§ 1213, 1214.) "'"The recording statutes operate to protect the expectations of the grantee and ***[***18]*** *secure to him the full benefit of the exchange for which he bargained."'"* ***[*435]*** *(Citizens for Covenant Compliance, supra, 12 Cal.4th at pp. 358–359.)[710] Soroudi persuasively argues it would make no sense to conclude* ***[**662]*** *that a document evidencing an irrevocable license need not comply with the recording acts, when another creating an easement that conveys an actual interest in land must do so. (See Smith, Neighboring Property Owners, supra, § 7:2 [an irrevocable license is "a residuary category" for "failed easements"].)*

c. LADBS's failure to require recording of the 1950 parking affidavit and its present belief the parking affidavit was binding on subsequent purchasers are irrelevant

California's recording statutes, Civil Code section 1213 et seq., were enacted in 1872 and establish a reliable system by which the expectations of buyers and sellers of property can be vindicated. Certainly, the lawyers for the City of Los Angeles should have been fully cognizant of the requirements of the recording statutes in 1950 and understood that ***HN5***[] *"[a]n unrecorded instrument is valid as between the parties thereto and those who have notice thereof" (Civ. Code, § 1217), but not against anyone else.[811]*

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[69] See *Restatement Third of Property, Servitudes, section 7.14* and *comment b, page 441* (discussing prescriptive easements and those that provide necessary access or utilities to landlocked land).

[710] As discussed, neither Soroudi nor Gamerberg knew of the parking affidavit when he bought his property. Just as Gamerberg knew he was purchasing a property with limited parking, Soroudi understood the parking spaces on his property were free and clear of encumbrances.

[811] ***CA(4)***[] **(4)** ***HN6***[] We reject Gamerberg's argument the existence of the parking affidavit in the LADBS files provided adequate notice to Soroudi. (See *Field-Escandon v. DeMann (1988) 204 Cal.App.3d 228, 236–237 [251 Cal. Rptr. 49]* ["[t]he existence of the permit in the public records of a governmental agency does not have the same presumptive effect of actual knowledge as recorded documents of title to real property, where the act of recording imparts constructive notice of the contents of the instrument"].)

Thus, it is doubtful the city's lawyers reviewed the 1950 parking affidavit for form, even though it is virtually certain the parking affidavit was intended by LADBS, as well ***[***19]*** *as its signatories, to create an interest running with the land, that is, a covenant or easement that would be assignable and binding on subsequent purchasers as long as the building stood. The current version of the parking affidavit, which is required to be recorded and supported by consideration, creates a covenant that "shall run with both the covenantor(s) and covenantee(s) above described land, shall be binding upon the covenantor, the covenantor's future owners, encumbrances, and their successors, heirs, or assignees for the benefit of the covenantee and the covenantee's future owners, encumbrances, and their successors, heirs, or assignees and shall continue in effect until the Superintendent of Building in the City of Los Angeles determines the offsite parking spaces covered by this covenant is no longer required by law." (LADBS, Covenant and Agreement Regarding* ***[*436]*** *Maintenance of Off-Site Parking Space, <http://ladbs.org/docs/default-source/forms/plan-check-2014/covenant-and-agreement-regarding*

ANSWER KEY-Q2

1. Upon C's death, what interests do A, B, and D, respectively, hold in Greenacre? Explain.

A, B, and C took title as joint tenants; thus, with the right of survivorship. All 4 unities are present. When C died, A and B remain as joint tenants. D takes nothing from C because a joint tenancy interest cannot pass by testate or intestate succession – the JT interest ends immediately on C's death and there is nothing to convey to D.

2. What is the most likely disposition of B's partition claim? Explain.

Most likely disposition is that it will succeed and the Court will order partition by sale. Where co-owners disagree as to the continuing use or co-ownership of the property, a partition action is proper. While "bad faith" conduct can be a defense to many acts, the better conclusion here is that B does not want to allow A to live at the property without B being able to use it too (remember, all joint tenants have 100% right of the unity of possession) and with an obligation for B to continue paying a share of the property taxes (not to mention insurance, and upkeep etc absent an agreement to the contrary.) Hence, the better conclusion is that B is well within their rights and not in "bad faith" here, particularly since filing a lawsuit where A will have notice and due process and a neutral judge is contrary to bad faith action.

3. Is A entitled to recover any of the property tax payments from B, and if so, in what amount? Explain.

Yes, absent agreement to the contrary, joint tenants are share and share alike for expenses of the property. By the 3rd year, A and B each had 50% ownership, this B should reimburse A $6,000 (half of $12,000.)

-maintenance-of-off-site-parking-space-pc-str-aff27-2014.pdf?sfvrsn=15> [as of Jan. 21, 2020], archived at <https://perma.cc/WTC8-Y7Q3>.)

*In light of the absence of any reference **[***20]** to assignees in the 1950 parking affidavit and the failure of the original signatories to record it, the testimony of the LADBS supervisor that the affidavit remained enforceable can best be understood as a comment on the Department's current practices, which has no relevance to the question in this case. But whatever the supervisor meant, as a nonlawyer, he was not qualified to provide legal advice and appears to have unintentionally misled Gamerberg on the survivability of the unrecorded parking affidavit. That mistake, however unfortunate, does not alter our conclusion.*

ANSWER KEY-Q3

This question requires a discussion of :

(1) eminent domain compensation to Owner of land vs. Tenant on land;

(2) a further takings analysis (very brief on the facts here); and

(3) A breach of contract analysis between L and T and whether L owes T for anticipated loss of business for the remaining 5 years on the lease.

Answer to 1 and 2:

When property is condemned for a public use, State must pay the fair market value of the condemned property to the owner of that property under the "takings clause" of the 5th Amendment of the US Constitution, made applicable to the states by the 14th Amendment. The actual language from the 5th A is: "nor shall private property be taken for public use, without just compensation."

We do not conduct much of an eminent domain analysis other than to say that a public roadway is a "public use" and the proper subject of the State's eminent domain powers. Further, we are told the $50,000 is "legally sufficient compensation for the taking" so we know, for purposes of the question, that State paid fair market value for the condemned property.

The hard question here is whether T is entitled to any of the $50,000? Generally, the compensation is paid to the Owner of the property condemned – L. Thus, the easy answer is the $50,000 goes to L and T gets nothing . . . but . . .

T may still be compensated from the $50k eminent domain award for the displacement caused by the condemnation of the 35 parking spaced and any inconveniences T has suffered, and here, in this commercial lease, for the loss of T's business "goodwill."

Additionally, T may have grounds to terminate the lease based on a cardinal change (100 to 65 parking spaces is a significant drop in customer access and convenience for a grocery store.)

Answer to Question 3:

With respect to the $50k, the question tells us that "All parties with a legal interest in the property must then agree on how to allocate this award among themselves. If the parties cannot agree, then a judge is appointed to decide the matter." The better analysis is that both T and L have claims to the $50k. T and L will either agree on who gets what from the $50k or litigate the issue.

The lease is silent on the issue:

L's case is easy; as owner they get all the money.

Competing evidence will be T's to present and may include expert opinion presenting projected lost revenues and lost "goodwill" for the remaining 5 years left on the lease caused by the loss of the 35 of the 100 parking spaces expressly contracted for. It is not hard to develop a scenario where T loses $50,000 over the next 5 years based on the loss of 35 parking spaces; in a car centric society like ours, if a customer cannot easily and conveniently park, they will go elsewhere where they can. L will counter by saying that this would deprive them of any value for what is, after all, the loss of L's property (not T's.)

Very hard to know how this comes out before the deciding judge.

An alternative approach in resolving the dispute between L and T is a more basic contract analysis: While L is not responsible for the condemnation of the 35 parking spaces, nevertheless, where the lease expressly provided for 100 parking spaces, a material term, T's loss of 35 of those spaces is a "material change" to the terms of the lease, subjecting L to an action for damages and/or T terminating the lease on a constructive eviction basis.

T has the better of this argument; the lease is silent as to the effect of condemnation. The loss of the spaces is easily understood as material diminution of the suitability of the premises for T's use as a grocery store.

If T desires to stay the remainder of the 5 years left on the lease @ $3,000/mo, T lost 35% of the utility of the premises when they lost 35 of the 100 parking spaces. 35% of $3,000 = $1,050. Discounting the lease by $1,050/mo results in a revised lease payment of $1,950/mo and this could be the award in favor of T. ($1,050 @ 60 months = $63,000; L would be better off letting T take the $50,000 by way of a settlement in this scenario.) L will argue, with considerable merit, that L did nothing to breach the lease and just like T, is an innocent to the harm, if any, caused by the loss of the 35 parking spaces. A tough call.

If T desires to "get out of the lease," this is probably a better track for T on a constructive eviction basis. I.e.. the premises are no longer suitable for the contracted purposes and no reasonable tenant would be expected to stay. T would have no further rental obligations to L. T may have claims for damages for lost revenues and lost goodwill; and, if T relocates to a similar premises but has to pay more, T would have claim for the difference between the 5 years remaining at $3,000/mo against the higher rental rate the new location. But, again, aside for being allowed to leave the lease early, here in this "no fault" scenario, it would be hard to impose damages against L, who, again, did not breach the lease.

Suggest that L and T mediate the dispute and resolve some type of allocation of the $50,000 between them; such a settlement may include T staying at the premises for a reduced rent or a shorter remaining term.

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1)

1. Strengths and Weaknesses of Diane's irrevocable license argument. Is there an irrevocable license? What does that mean for Lot #1 and #2? If there is an irrevocable license is Charles bound by it?

License

A license is an agreement to allow use of one's property by another for a specific purpose. A license can be revoked. An irrevocable license is an easement.

good

In this case, Abe gave Bill permission to use a portion of Lot #1 for 8 parking spaces in order to receive a building permit and ultimately a certificate of occupancy for a warehouse that he wished to build on his own property, Lot #2. Essentially, Abe gave Bill a licence to use the 8 parking spaces. The question then becomes, did this license become an irrevocable license (easement) which ran with the land to subsequent buyers of either property?

In order for a burden of any kind, easement or license to run with the land several factors must be considered. Was the agreement in writing? Did the parties have the intent for the benefit and burden to run with the land? Was notice given to the new party burdenened? Is there vertical and horizontal privity between the parties? And does the agreement touch and concern the land?

good

Abe did fill out in WRITING a parking affidavit form from the City's Department of Building and Safety (DBS) agreeing to provide 8 parking spaces to Lot #1. The distinction of providing the spaces to Lot #1, and not just to Bill is significant. This seems to suggest that Abe INTENDED for the parking spaces to be available to anyone owning the lot, not just Bill even though the affidavit did not expressly lay this out.

Notice can be provided three different ways, and notice of a burden can be accomplished with any; actual, constructive, and inquiry. Actual notice occurs when you explicitly tell someone that there is a burden associated with the property. Constructive notice occurs when there are official documents such as titles, deeds, etc which state that a burden runs with the property. Inquiry notice occurs when a reasonable person would know from some characteristic of the property that a burden exists.

When Charles purchased Lot #1 from Abe he was not given actual notice of the parking space agreement with Lot #2. Additionally, the facts tell us that neither Abe nor Bill ever actually marked the 8 parking spaces. This seems to suggest that there is nothing visually about the spaces that would put Charles on inquiry notice of any burden associated with them. Additionally, since the parking affidavit was never filed with the county clerk recorder's office, when Charles did his due diligence and obtained a title report neither the title policy nor the deed

and you are done. Good.

gave any indication of a parking burden imposed on Lot #1 by anyone else. Charles will make the argument that he did not have NOTICE of the burden, so it cannot run with the land.

Charles will also probably make the argument that Abe did not have any intention for the agreement to run with the land otherwise he would have told him about it at the time of purchase. However, Diane can make a counter argument that since Bill never actually utilized the parking spaces, the agreement was probably far from his mind and did not occur to him to mention. She would probably also emphasize the fact that when the affidavit was signed such an agreement had no requirement to be on file with the county clerk recorder's office, so he probably assumed that having it on file with the DBS was sufficient to make sure that future owners were able to make use of it.

Charles will also make the argument that there is no VERTICAL PRIVITY between himself and Diane. He will argue that there is no relationship whatsoever between the two of them other than the fact that they own property which borders each other's. Diane will argue that being neighbors is their relationship, and is sufficient to create vertical privity. He will also argue that there is no HORIZONTAL PRIVITY. Charles will argue that no agreement was ever made between himself and Diane. Diane will argue that her certified letter to Charles and his acknowledgement in the form of signing the receipt and then failure to follow up would equate to an agreement.

Since the burden has to do with parking spaces on one of the properties, both Charles and Diane would likely agree that the burden is CONCERNING AND TOUCHING THE LAND.

The rules for a benefit running with the land for Diane is less restrictive. The previous owner must have intended for the benefit to run with the land, there must be vertical privity, and the benefit must be CONCERNING AND TOUCHING THE LAND.

Diane will make the argument that of course Bill INTENDED for the benefit to run with the land, because the building is only allowed to exist because of the parking spaces. Again, she will argue that the relationship as neighbors between herself and Charles is enough to form VERTICAL PRIVITY. Diane will also point out that since the parking spaces are literal pieces of the land, the agreement is CONCERNING AND TOUCHING THE LAND.

Bonafide Purchaser Doctrine

A bonafide purchaser is protected against unrecorded title deficiencies if they made their purchase in good faith with no knowledge of any unrecorded deficiencies or encumbrances of title. Essentially, as long as a buyer is not trying to be shady and take advantage of a situation where they know there is an unrecorded issue, they are protected against unrecorded issues. This extends to unrecorded easements as well.

"recorded"

In this case the parking affidavit was not filed with the county clerk recorder's office. As a result, when Charles did his due diligence to check into any encumbrances associated with the property nothing was flagged in any of the official documents routinely pulled during the purchase of a property. Charles had no idea of the previous arrangement between Abe and Bill. When Charles purchased Lot #1 he had no notice, and no reason to believe that there were any agreements between the two properties related to parking or otherwise. In fact, for 19 years Charles utilized the parking spaces for his own tenants without any knowledge that anyone else had any claim to them. Charles is a bonafide purchaser which means that he is protected against unknown burdens.

The bonafide purchaser doctrine is an illustration of the court's attempt to keep things fair. However, easement by estoppel is also a doctrine the court utilizes in an effort to keep things fair.

Easement by Necessity

Traditionally easement by necessity is applied in cases in which landlocked parcels cannot be accessed without utlizing someone else's properrty (the property is landlocked). no evidence Lot #2 land locked + no common grantor

However, ff the parking spaces were required in order for the warehouse to be built, an argument can be made that since the city ultimately issued the permit and certificate of occupancy the warehouse itself is not allowed to exist without the 8 additional parking spaces. Since there is not sufficient space on Lot #2 to house any more parking spaces, an easement by necessity has been created, and in order for the warehouse to be used Lot #1 must provide the 8 additional parking spaces.

Easement by Estoppel

When a revocable license has been detrimentally relied upon, meaning that excessive money, time, and/or energy has been invested into it by the benefiting party the revocable license becomes an easement by estoppel and cannot be revoked.

Diane became aware of the agreement between Abe and Bill and immediately put Charles on actual notice of her intent to enforce the agreement with Charles. Charles' signing of the receipt for the certified letter informing him of such is proof that he was put on actual notice. His notice and silence could be interpreted as acceptance, and his own intent to be bound.

Diane then relied upon Charles lack of responce as assent and moved forward, spending $600,000.00 over the course of 14 months on her building expansion which required use of the 8 parking spaces on Lot #1. After 14 months Diane again reached out to Charles to identify which parking spaces she could utilize. Again, Charles did not respond, so Diane was forced to commence a lawsuit to get an answer.

disagree but good argument

14 months, and $600,000.00 is a significant investment.

Since courts typically want to do the most "fair" thing it is likely that the court would side with Diane and allow her use of the parking spaces under a doctrine of easement by estoppel and easement by necessity - essentially confirming her claim of an unrecoverable license. Even though Charles would be considered a Bonafide Purchaser, his loss of 8 parking spaces is significantly less impactful than Diane's loss of ability to utilize her entre building, and the 14 months and $600,000.00 she spent after making a good faith effort to keep Charles in the loop about her plans.

good

2. Is there a covenant in favor of lot #2 against Lot #1? If so, is Charles bound by it?

Real Covenant

A real covenant is a formal agreement (promise) between two parties regarding a piece of real property. A real covenant must be filed on record to be enforceable.

An argument can be made that there is a covenant in favor of Lot #2 against Lot #1. Abe and Bill certainly had an agreement in 1950 when Abe agreed to grant Bill a license to utilize the 8 parking spaces on lot #1. An argument can be made that the agreement was recorded because they filed official documentation of it with DBS, and at the time the agreement was made this is all that was required.

However, since there was no proper notice, the covenant probably would not run with the land, and Charles would not be bound by it. With that being said, as discussed above the court would still likely find that an easement by estoppel and necessity exists and the same outcome would essentially occur anyways forcing Charles to provide Diane with 8 parking spaces.

3.Is there an equitable servitude in favor of Lot #2 against Lot #1? If so, is Charles bound by it?

An equitable servitude is a covenant which requires an equitable remedy (injunction or specific performance) to be enforced as opposed to money damages.

In this case since an easement by estoppel and necessity would likely be found to exist, thus creating a covenant which requires specific performance to be upheld, there probably is an equitable servitude in favor of Lot #2 against Lot #1.

- For burden to run, must have ntc
- C BFP w/out ntc
- no ntc of burden

END OF EXAM

- The end

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2)

Question 2:

Here is a situation where a parent passes away and leaves their house to their three children. As often happens, angry feelings between the parties crop up when real property interests are on the line. Let's see if the law can keep the peace, and barring that, at least a resolution to their issues.

1. Upon C's death, what interests do A, B, and D respectively hold in Greenacre?

A joint tenancy is a co-ownership of a property. A joint tenancy is created between two or more parties when the four unities are present at the creation of the joint tenancy and it also includes an automatic right of survivorship.

The four unities are the J tenancy is created at the same time, the J tenants all hold title (single, unified title, a legal fiction), the JTenants have identical interests, and they all have equal right of possession. A joint tenancy can be unilaterally severed and when that happens a tenancy in common transpires (TIC does not have auto right of survivorship).

Here O died leaving the house to the three children A, B, and C and the facts tell us it was a joint tenant with right of survivorship. The four unities are also in play because the JT was created at the same time (at the death O), ABC hold a single unified title to the house, there are three identical interests (in this case its 1/3 interest for each), and they all have equal right of possession.

When C dies at the end of the two years there is nothing to suggest that C severed that joint tenancy through unilateral action. For example, C did not complete any process whereby he transformed his portion into a tenancy in common in order to have the right to will this house to his child. Therefore, when C dies, D does not get this particular piece of property. D may get other pieces of real property outside the scope of this situation. But for the purposes of this problem, because it was a joint tenancy when C died A and B received C's share. There is nothing to suggest at that point that A or B acted unilaterally themselves to sever the JT.

Conclusion:

Once C passed away, A and B each own half interest as joint tenants and D owns nothing in Greenacre. good

2. What is the most likely disposition of B's partition claim?

Partition is a term that is used when an individual who co-owns property petitions the court to help divide up the shares. Generally this means that the house will be sold and the proceeds will be split between the parties based on the amount of interest that each has in the property.

Of note, as mentioned before, D did not receive any interest in Greenacre because ABC had joint tenancy with automatic right of survivorship. Therefore, D will not be part of the partition action. Therefore, further analysis will proceed with A and B as parties to the partition action.

Filing a petition is an entirely legitimate action for B to do. There has already been some acrimony between A and B because when B told A they wanted to move their family into Greenacre, A told them that the house wasn't big enough for two families. This very well may be true but remember that joint tenants each have equal possession of the property so A cannot keep B from accessing the property despite the fact that A was living there originally according to their original verbal agreement. Therefore, A's claim that B is acting in bad faith is not a strong argument. Furthermore, when ABC agreed that A would live in the house it appears it was a verbal agreement and there was no discussion on how long the arrangement might last. Furthermore, A has been living there rent free. If the parties had agreed to have a tenant rent the home they would have had $9,000 per year split three ways. B has an argument that he would have $3K for the first year, 3K for the second year, and if they had rented the place the third year with them both being JTs he would have gotten $4500 which would have added up to $10,500 in rental income that he could have gotten but for the fact that A was living there rent free. A will point out that B agreed that A could live there rent free.

Things happen, families have fallings out. This is why the court system is there to help divide up property when it happens. A and B could have tried to hammer out an agreement themselves or they could have gone to mediation. However, it's gotten past that point because B has already filed a partition action. Assuming this could go to court, it appears that B wants to move to Greenacre so it would be reasonable to infer that B needs a place to live and having the proceeds from the partition would be a good thing for him to have. It does not appear that B is interested in turning the joint tenancy into a tenancy in common where he would be able to will his portion of his property to whomever he wished upon his death.

Since A had received benefit from living there rent free for nearly three years and A also told B too bad this place isn't big enough for two families A's bad faith argument won't be a strong one.

Conclusion:

The judge should rule in favor of B and order the home sold and the proceeds split between the two parties.

3. Is A entitled to recover any of the property tax payments from B, and if so, in what amount? Explain.

A joint tenant is responsible for their portion of taxes based on the ownership interest they have in the property.

Here A should be able to assert a claim for half of the taxes against B because they each own equal shares of Greenacre. Furthermore, there is a two year track record of them each paying the tax bill based on their percentage of their ownership interest.

Conclusion:

A will still have to move (or perhaps she can work out a back room deal with B and buy him out of his share of the property so she can continue to live there) but B will be responsible for his portion of the tax bill for the third year they were joint tenants of Greenacre.

END OF EXAM

Excellent work

3)

Question 3:

This is a situation where the government is wanting to condemn part of a parking lot that is part of a piece of property called Whiteacre. L owns Whiteacre which is a store and a parking lot and has rented the premises to T for use as a grocery store. Who gets a share in the eminent domain award.

1. What relief, if any, is T entitled to obtain for the permanent loss of parking spaces?

Takings Clause: No private property shall be taken for public use unless there is just compensation. There are two basic types of takings: Eminent Domain and Inverse Condemnation which is also known as Regulatory Takings.

good

Here, this is a straightforward Eminent Domain case because the State has decided to widen the highway and in order to do so they have to condemn a strip of land 30 feet wide along the edge of the parking lot. This will reduce the number of available parking spaces on Whiteacre from around 100 to 65. That is just a little less than half of the parking lot that will be gone in order to have a better and bigger highway for the general public to travel on.

good

However, since the state is permanently taking this property, they must pay just compensation to those who have a valid ownership of a recognized interest. Just compensation means fair market rates i.e. how much a cash buyer would pay the owner of Whiteacre for the taking of that parking lot strip. Here the amount is $50,000 which we know is legally sufficient compensation for the taking. It has been deposited in an escrow account for those parties with a legal interest to figure out how to allocate. If the parties cannot agree they will have to go to a judge who will divvy up the ED award between them.

good

Here there are two people with valid ownership interests: the landlord who is the owner of Whiteacre (the facts don't tell us specifically but for these purposes let's assume he owns it in fee simple). The owner of land condemned for eminent domain has a valid ownership interest. The tenant also has a valid ~~ownership~~ interest and they are entitled to the loss of business goodwill. We know the tenant is a valid owner of a recognized interest because he has a lease from the landlord for 10 years at a rate of 3K a month and they have gone so far as to record the lease in the local recorder's office where all records are required to be kept by law.

compensable

Conclusion:

In this case the grocery store tenant does have a valid stake in a recognized interest due to loss of business goodwill and should be entitled to some compensation for the loss of those parking spaces.

2. If T is entitled to relief, for how much $$$ and from whom?

Here, that gets trickier because both the landlord and the tenant both have valid eminent domain award interests. The landlord did all the work of recording that lease at the recorder's office however, he did not include a clause in the lease about what happens in the case of an ED condemnation because the facts tell us the lease is silent. If there had been a clause to the effect of what would happen in this ED situation it is likely the landlord's owner would have included language stating that the tenant should get nothing. And going forward it is highly likely that that clause will be in that landlord's contracts in the future to avoid the headache and haggling that is going to transpire now.

The tenant will argue that they have have a valid interest and should be compensated for the loss of business goodwill. They are losing almost half (45%) of their parking spaces. The landlord may wonder how many parking spaces are used on a daily basis. If that lot is truly full on a daily basis all the time the store is open, the tenant may have a better argument for more of the award. But maybe it's a grocery store in which the parking lot is rarely full because the parking lot was pretty large for the store to begin with. Either way nearly half of the spaces is a significant amount so it is likely that there will be some impact to the business. People are going to lose the goodwill they have to the grocery store if they have problems parking and might go elsewhere.

The landlord will argue that the tenant has only five years left on the lease and if the tenant leaves then the landlord will need to find another tenant. And while the original tenant is off to new rental premises, the landlord is stuck with the loss of parking forever going forward. The landlord will therefore argue they should be entitled to most if not all of the award in anticipation of future issues with future tenants. The tenant may counter that grocery stores tend to stay in one place and is planning on extending the lease for another ten years or more especially if the landlord is generous and agrees to the tenant getting some of the ED award.

The pot of money (the $50K) isn't going to increase. The landlord and tenant are going to have to settle this out themselves. The landlord's lawyer is going to suggest that the landlord offer some money but not a lot because he should reserve the greater balance of the funds for himself as he owns the property which is a greater interest than someone who rents the property. The tenant will want something however. If the landlord is savvy they will hold out (even though this isn't part of a strict eminent domain award decision) to extend that tenant's lease because if he makes the tenant angry by being stingy the tenant will leave when the lease is up and the landlord will be stuck finding a new tenant, one that may not be happy with less parking spaces. There is no basic, standard math formula to calculate and get a number for the tenant, this will come down to negotiation.

Conclusion:

Since there isn't any magical formula, I would counsel these two to avoid having a judge decide because it's better for them to come to a decision than have a third party make it for them. Ideally the tenant at least gets a token amount and the landlord extends the lease so they can continue their business together (even though a lease extension isn't part of an ED award, this is the landlord thinking down the road and making smart business decisions beyond this ED issue). With the improved highway it may be that there will be more traffic driven to the store in the end anyway. (although that could cause a problem because their parking lot is smaller but that's a problem for another day) Let's find a solution that is a win for both parties. And also, landlord, put a ED clause in all your future contracts.

END OF EXAM

STRONG

You Got it + wrote it clearly + succinctly

Keep it up